

Domicile, Legal Residence and Home of Record

By

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As a member of the armed forces, how often are you asked, "Where are you from?" or "What is your home of record? Or "What is your state of legal residence?" As a legal assistance attorney, I often hear a service member on active duty give me a different answer to all three questions. Here is an example. A soldier who was born and raised in Cuero, Texas enters the Army while attending the University of New Mexico in Albuquerque, and then is assigned to Fort Meade, Maryland. While living in Laurel, he buys a house, registers to vote, gets a Maryland driver's license, registers and titles a new car. The state of Maryland appears on all the accompanying documents. In this example, the soldier's state of origin (Texas) is different from his home of record (New Mexico), which is different still from what appears to be the soldier's legal residence (Maryland).

Soldiers and their family members are often confused when asked to fill out documents that refer to "home of record," "home state," "domicile" and "legal residence." The reason is that these terms are frequently used interchangeably within the military, by agency employees, and on many government forms. The fact is that these terms have different legal meanings as defined below.

People generally use "home state" to mean their state of origin, their "native state," the state where they "are from." This state has no legal significance but may well explain where a person developed an accent or the love for lousy professional teams located there. (For example, have you ever met a Buccaneers fan who was not from Florida? Now you will!)

"Home of Record" is a term used by the military for purposes of indicating the place recorded as the home of the individual when commissioned, appointed, enlisted, inducted or ordered into a tour of active duty. The "HOR" remains the same for the uninterrupted period of active duty. Once designated, the HOR is difficult to change for the benefit of the soldier. At the time of discharge from the service, the military department will use your home of record to determine your maximum travel and transportation allowances. You will not be paid travel and transportation expenses to a point beyond the distance from the place assigned (at the time of separation) to your HOR.

"Legal residence" refers to a person's permanent domicile, as distinguished from a temporary residence. "Domicile" is defined as that place where a person has his or her fixed, permanent place of abode, to which the person intends to return despite temporary residences elsewhere or temporary absences. Once established, a person's legal residence, or domicile, remains the same even when the person enters the armed forces and lives in another state pursuant to military orders. Because of the protections provided under the Soldiers' and Sailors' Act of 1943, a service member's legal residence does not change until the member acts to establish a new residence in the state in which assigned. Therefore, if a member of the armed forces never acts

to change his or her legal residence (examples are provided below), the member's Home of Record will be the same as the member's state of domicile.

One way of understanding this concept is to realize that acquiring a legal residence, or domicile, is like becoming a citizen of a particular state. As a "citizen"—that is, a resident or domiciliary of a state—a person may enjoy benefits afforded only to domiciliaries of that particular state, such as the right to receive in-state tuition rates to colleges and universities. The state of domicile may force certain burdens on its residents as well, such as the burden to pay income and personal property taxes. Acquiring a legal residence is important for another reason. Legal residents are also subject to the state's jurisdiction on legal matters. For instance, a court in a person's state of domicile has the authority to enforce a judgment filed against a person in a state where the person is not domiciled.

Income tax requirements for service members vary from state to state. Many states do not impose income taxes on its residents. Some states do not impose income taxes on its residents serving in the armed forces at installations located in other states. Other states, such as Maryland, still require its residents serving on active duty to pay income tax regardless of where the resident is stationed. The manner in which each state treats its military residents is found on the Tax Assistance Program website at www.detrack.army.mil.

In addition to the authority to impose income tax on its residents, states may impose income tax on non-residents who earn income from a source located within its borders. However, the Soldiers' and Sailors' Civil Relief Act prevents states from imposing income tax on the *military* income of non-resident service members residing in the state simply as a result of military orders. Merely living in a state pursuant to military orders does not make the service member a legal resident. However, as explained below, a state may conclude a military member is a legal resident based on certain actions that indicate the member's intent to make this state his or her legal residence. For example, in one reported case New Jersey considered purchasing a home was sufficient to prove a service member's intent to move his residence from Florida to New Jersey. As a consequence, New Jersey imposed its income tax requirements on the service member.

How does anyone establish a legal residence or domicile? The law requires two steps: first, the person's physical presence in the state (flying over the state sipping tomato juice on a American Airlines flight will not suffice, but visiting in-laws for the first time after getting married will); and secondly, the person's desire (or intent) to be a permanent "citizen" of that state. Look again at the definition above. For members of the armed forces serving on active duty, this second step includes the intent to return to a state after being discharged from active duty. Understanding this two-pronged legal test is easy. The hard part is proving your intent.

How does anyone prove a fixed intent to remain in or return to a particular state? First, it is important to understand that there is no one particular form or super-legal document to execute or a special ceremony to attend. (Except in Texas, my home state, where I understand one must eat eight jalapeno peppers in one sitting and recite "The Eyes of Texas" by heart.) Rather, to establish intent government agencies (and college financial aid departments) will look to see

what a person has done to demonstrate this intent. The most common actions that prove intent are listed below:

- Payment of state income taxes (Courts have considered this most important because of a person's willingness to put his money where his intent is.)
- Registering to vote and voting record (A member of the armed forces right to vote in Florida by absentee ballot while serving outside the state received national attention in the 2000 presidential election.)
- Application for a driver's license (Financial aid offices at colleges and universities have denied in-state tuition to a dependant solely because the sponsor's driver's license was issued by another state.)
- Registering a vehicle and paying *ad valorem* personal property tax on the vehicle (For more regarding drivers' licenses and vehicle registration rules, visit the legal assistance Website at <http://www.detrick.army.mil/detrick/usag/sps/sja/assistance.cfm> and choose the link to "Maryland Motor Vehicle Laws.")
- Filing a DD Form 2058 (A Department of Defense form filed with DFAS stating the service member's state of residence for income tax withholding purposes. Simply signing this form without meeting the two-part legal test is not sufficient if ever challenged.)
- Purchasing a real estate (Service members who buy a home should be prepared to prove the purchase was not accompanied by the intent to make that state their new residence.)
- Enlistment and re-enlistment documents
- Location of bank accounts
- Participation in local affairs
- Membership in the local chapter of a national organization (such as a college fraternity or professional association)
- Business connections
- Location of majority of family members

In summary, a service member's home of record describes the state where the member was living when he or she entered the military. A service member's state of legal residence is determined by a physical presence and the intent to make that state his or her permanent home. Intent is demonstrated by many actions, chief of which include paying income taxes, registering to vote, and obtaining a driver's license. To withstand a challenge, service members should keep as many of the above "eggs" in one basket as practical despite the fact doing so is often inconvenient.

For assistance with specific questions, visit the Fort Detrick Legal Assistance located at 521 Fraim Street. The Fort Detrick Legal Assistance Office helps soldiers, family members, and retirees in legal matters. The office is open from 7:30 a.m. to 4:30 p.m. Monday through Wednesday and Friday. The office is open 1:00 p.m. to 4:30 p.m. on Thursdays. You can reach the office at (301) 619-2221.